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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,067	01/09/2002	Eliot Crowe	9021-11	4737
20792	7590	03/08/2004	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC			WILLS, MONIQUE M	
PO BOX 37428			ART UNIT	PAPER NUMBER
RALEIGH, NC 27627			1746	

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/937,067	CROWE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Wills M Monique	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### *Information Disclosure Statement*

The information disclosure statement(s) filed October 15, 2001 has/have been received and complies with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 .

### *Priority*

United Kingdom foreign priority document(s) 9906536.9, filed March 23, 1999 and 9928496.0 , filed December 3, 1999 and submitted under 35 U.S.C. 119(a)-(d), has/have been received and placed of record in the file.

### *Preliminary Amendments*

The Preliminary Amendment(s) filed September 20, 2001 has/have been received and considered in the following office action. In accordance with the Preliminary Amendment, claim 9 has been cancelled. Claims 1-8 are pending.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Jutte et al. U.S. Patent 4,338,383.

Jutte teaches a container for a maintenance-free lead -acid storage battery including a multi-compartment base wherein individual cells of the battery are contained (abstract). With respect to claim 1, the battery casing (11) comprises a lid (10) having a top surface and a recess (24) through which gas is expelled from the battery, a cover (25) for sealingly covering said recess (33), a gas guide means (35) that forms a passageway or distribution chamber between the cover housing and vent cover and serves to convey the egressing gas substantially omnidirectionally from each filler well aperture to a gas escape gap (36) (col. 4, lines 25-35), and the cover provides a sealing means between the cover and the recess (col. 2, lines 15-20). See Figures 7 & 9. With respect to claim 2, a plurality of vent plug portions 27 are located at the base of recess 33 for each battery cell (Fig. 3 and col. 3, lines 55-65). With respect to claim 3, the top surface 25 of the vent cover is seated against the bottom surface (29) of the recess, a substantially smooth and contiguous surface is formed in conjunction with the adjoining top surface of the cover body (12). See column 3, lines 45-55. The instant claims are anticipated by the prior art set forth. The limitation in claim 1, with respect to the cover and gas guide means being positioned in more than one orientation to the battery casing, is considered to be an inherent property of the battery assembly as set

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forth in the prior art, because the battery cover (25) is symmetrical and therefore may be reversably positioned in recess (24).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jutte et al., U.S. Patent 4,338,383 in view of Ching U.S. Patent 6,025,086.

Jutte teaches a battery vent assembly as described hereinabove. With respect to claims 5 & 6, the lid (10) has channels 32 extended from the recess where the gas guide means is located (Fig. 7 & 9). With respect to claim 7, the cover (23) is removable from lid (10). See column 4, lines 10-11.

Jutte is silent to the gas guide means comprising a nozzle protruding from the cover where a flexible tube may be attached (claim 4). The reference is also silent to the cover and lid each having two straight parallel sides and two semi-circular ends and guide means being located in the middle of one semi-circular end of the lid (claim 8).

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Ching teaches that it is conventional to employ nozzle 322 protruding from the cover in order to facilitate attachment of a conduit, such as a flexible hose (col. 9, lines 15-25).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the instant invention was made to employ the nozzle and hose assembly of Ching in the vent cover of Jutte to safely remove gasses emitted from the battery.

With respect to claim 8, it would have been an obvious matter of design choice to fabricate the cover and lid so that each has two straight parallel sides and two semi-circular ends and guide means being located in the middle of one semi-circular end, since such modification would have involved a mere change in shape of the lid and cover, absent persuasive evidence that said particular configuration is significant. A change in shape is generally recognized as being within the level of ordinary skill in the art. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) (The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant.)

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*Conclusions*

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Monique Wills whose telephone number is (571) 272-1309. The Examiner can normally be reached on Monday-Friday from 8:30am to 5:00 pm.

If attempts to reach Examiner by telephone are unsuccessful, the Examiner's supervisor, Randy Gulakowski, may be reached at 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mw

02/28/04

  
BRUCE F. BELL  
PRIMARY EXAMINER  
GROUP 1746

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